Filed 7/28/05 Debay v. Ortiz CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CAROL DEBAY, Defendant and Appellant, v. SAMUEL ORTIZ, Plaintiff and Respondent.	B176070 (Los Angeles County Super. Ct. No. BD255411)

APPEAL from a judgment of the Superior Court of Los Angeles County. Timothy Murphy, Judge. Dismissed.

Carol Debay, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Carol Debay (Debay) purports to appeal from a judgment in a custody case. We find that Debay has waived her appeal. In violation of California Rules of Court, rule 14, she did not state the nature of the action, the relief sought below, or the judgment or order from which she appeals. Also, she did not provide record citations for many of her factual references.

The appeal is dismissed.

FACTS

Debay and Samuel Andres Ortiz (Ortiz) are the parents of Samuel O. (Samuel) and Antoinette O. (Antoinette). In 1997, the trial court granted sole legal and physical custody of Samuel and Antoinette (sometimes collectively referred to as the children) to Ortiz. Debay was granted monitored visits in a neutral setting, but only if the children consented to visitation.

In 1999, Debay initiated an order to show cause (OSC) requiring Ortiz to show cause why the custody and visitation orders should not be modified. The trial court made no change to the custody order. However, it ordered that Debay be given visitation every Saturday and Sunday from 2:00 p.m. to 4:00 p.m. at a S.A.F.E. for Kids Program facility closest to the parties. The trial court required the parties to appear for periodic progress reports. By April 2000, the trial court permitted Debay to have alternate weekend overnight visits.

In March 2004, Debay filed an application requesting, inter alia, custody of Antoinette, child support and spousal support. She also requested child abduction prevention orders. A month later Ortiz filed Judicial Council form DV-110, which was titled Temporary Restraining Order and Notice of Hearing. The DV-110 form stated that Debay was ordered to not harass, contact or come within 100 yards of Ortiz, his wife, Samuel and Antoinette. The hearing was noticed for May 10, 2004. Additionally, Ortiz filed: Child Custody and Visitation Order form DV-140, Description of Abuse form DV-101 and Child Custody Visitation and Support Request form DV-105. The DV-140 stated that Debay was ordered not to have any visits with Samuel and Antoinette until the next court order. The DV-101 form stated that the basis for the requested temporary

restraining order was that Debay made death threats. Furthermore, the form stated that Debay is violent, verbally abusive and threatening. Finally, the DV-105 form requested that the trial court order Debay to complete domestic violence classes, parenting classes, and anger management classes.

The parties were ordered to attend conciliation court. Subsequently, the trial court entered a restraining order against Debay. Debay's request for custody of Antoinette was placed off calendar.

This appeal followed.

We deemed Debay's opening brief defective for failure to comply with the California Rules of Court, rules 5, 5.1, 9, 14, 15, and 44 and dismissed her appeal. Debay moved to set aside the dismissal. We granted her motion.

DISCUSSION

There is no respondent's brief from Ortiz, Samuel or Antoinette. "[I]f [a] respondent fails to file a brief, the judgment is not automatically reversed. Rather, the reviewing court 'may accept as true the statement of facts in the appellant's opening brief and, unless the appellant requests oral argument, may submit the case for decision on the record and on the appellant's opening brief.' [Citation.]" (*In re Bryce C.* (1995) 12 Cal.4th 226, 232.) Based on the foregoing rule, we cannot reverse unless a reversal is warranted on the merits.

Unfortunately for Debay, her opening brief is incoherent and we are rendered powerless to understand or reach the issues.

In her statement of the case, Debay claims that she is the victim of false allegations of criminal threats and child abuse, and that the temporary restraining order involved false allegations. As well, Debay complains about "62 documented missed visitations" and the failure of Ortiz to give the trial court notice of his change of address. (Capitalization omitted.) Debay contends that a jury found her not guilty of "the offense charged" and "all members agreed [Debay] should have custody of children." (Capitalization omitted.) Finally, she states: "[The trial court] made an order for anger management classes and monitored visitation based upon false accusations which went

on uninvestigated. Furthermore, mediation date was set incorrectly by [the trial court], therefore there was no mediation prior to the hearing which was required before case was to be heard." (Capitalization omitted.)

According to the statement of appealability, this "case is being appealed by grounds of an incorrect mediation date given" by the trial court. (Capitalization omitted.) Debay then lists other issues, including all contested custody and visitation issues between the parties.

In her statement of facts, which contains no record citations, Debay states: (1) "False allegations were made without being investigated or proven to be true." (2) "Incorrect court date given by the judge." (3) "No conciliation court before judgment." (4) "No change of address was given to superior court by Defendant which is a violation of court orders." (5) "Other issues interfering with court appearances." (6) "Constant perjury in court by respondent." (7) "Child neglect issues not investigated to date[.] 104 temperature for over 2 days not attended to by respondent." (8) "Dental neglect not attended to by respondent." (Capitalization omitted.)

Debay's argument section is set forth in outline form and informs us that pursuant to the local rules, decision makers must be prepared and present at mediations, and that a violation of these local rules can result in sanctions. Next, Debay argues that an "enforceable contract per Evidence Code [section] 1123 was not made." (Capitalization omitted.) We are told that the trial court ordered mediation but gave the wrong date, the case was heard without conciliation, and that monitored visitation and anger management were ordered "due to false allegations in which material evidence against this is provided in exhibits." (Capitalization omitted.) Debay complains that her views were not properly considered and heard. Finally, she contends: "Respondent's mother Ms. Martha Padilla was employed at Hall of Records which is directly connected to Los Angeles Superior Court. Due to this, my case has not been heard fairly." (Capitalization omitted.)

In her conclusion section, Debay avers: "For the reasons stated above, the decision of California Superior Court should be reversed and should be declared unconstitutional insofar as it was a judicial error. [¶] As a result of false accusations, statements and perjuries made by respondent and family over years[,] [Debay] is now suffering from a serious depression which thus qualifies as disabilities under the Act (106)[.]" (Capitalization omitted.)

In sum, Debay's opening brief is no more than a string of disorganized statements that have no clear purpose.

We understand that custody cases can by emotionally trying ordeals, and we have no doubt that Debay has suffered her share of disappointment and turmoil. But before we can assist an appellant, we need basic information, such as what is being appealed from, what is being requested, the relevant facts, and a cogent legal argument. Otherwise, all we can do is speculate as to what issues are presented. Simply put, "[i]t is not our responsibility to develop an appellant's argument." (*Alvarez v. Jacmar Pacific Pizza Corp*. (2002) 100 Cal.App.4th 1190, 1206, fn. 11.) Debay should note the following appellate rules: "'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel. Accordingly every brief should contain a legal argument with citation to authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' [Citation.] [¶] It is the duty of appellant's counsel, not of the courts, 'by argument and the citation of authorities to show that the claimed error exists.' [Citation.]" (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.)

Even if we were to speculate, it would not help Debay. The main theme of Debay's opening brief is that there was no mediation before a "hearing." The record indicates that on April 20, 2004, Ortiz filed various Judicial Council forms for domestic violence and requested a temporary restraining order. On April 27, 2004, the trial court ordered the parties to attend conciliation court prior to the next hearing. Then, on May 10, 2004, the trial court signed a Restraining Order After Hearing form DV-130. Debay

was ordered not to harass, contact or come within 100 yards of Ortiz, his wife, Antoinette or Samuel. However, the attached Supervised Visitation Order form DV-150 permitted Debay to have supervised visits with Antoinette twice a week. Debay was ordered to attend a batterer intervention program. The trial court's minute order indicated that the restraining order would last three years.

The problem is that there is nothing in the record indicating that the parties failed to mediate before the May 10, 2004, hearing. While it is true that Debay states in her brief that there was no mediation, we cannot consider facts outside the record. (See *People v. Sakelaris* (1957) 151 Cal.App.2d 758, 759 ["On appeal, it is established . . . that no facts outside the record . . . can be considered"].)

When Debay filed her initial brief and we found it to be defective, we were obligated by California Rules of Court, rule 14(e) to give her a second chance. However, we are not obligated to give her a third chance. Our letter vacating the prior dismissal informed Debay that the failure to cure her default within 15 days would lead to dismissal without further notice. On this point, *Berger v. Godden* (1985) 163 Cal.App.3d 1113 is instructive. While applying former California Rules of Court, rule 18, the *Berger* court stated: "We hold that while [California Rules of Court,] rule 18 does contemplate that an appeal not be dismissed because a party has filed one brief which fails to comply with the rules, nothing in the rules precludes dismissal for failure to file a brief substantially in compliance with the rules after the appellate court has made an order striking one nonconforming brief with leave to file a new brief. Obviously implicit in such an order is the directive that the new brief comply with the rules. The order in the present case expressly provided that if a new brief were not filed as specified, the appeal would be dismissed. When a new brief substantially fails to comply with the rules, as in the present case, the appellate court has both statutory and inherent power to dismiss the appeal." (*Berger*, *supra*, 163 Cal.App.3d at p. 1118.)

DISPOSITION

Debay's appeal is hereby dismissed.

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_____, J.
ASHMANN-GERST

We concur:

_____, Acting P.J.
DOI TODD

_____, J.*
SUZUKAWA

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.